

# **Rye City Planning Commission Minutes**

February 26, 2002

1 **PRESENT:**

2  
3 Michael W. Klemens, Chairman  
4 Franklin Chu  
5 Barbara Cummings  
6 Hugh Greechan  
7 Lawrence H. Lehman  
8 Brian Spillane  
9

10 **ABSENT:**

11  
12 Peter Larr, Vice-Chairman  
13

14 **ALSO PRESENT:**

15  
16 Christian K. Miller, AICP, City Planner  
17 George Mottarella, P.E., City Engineer  
18 Chantal Detlefs, City Naturalist  
19 Nicholas Hodnett, Chairman, CC/AC  
20  
21

22 Chairman Klemens announced that the Planning Commission was conducting a closed-  
23 door meeting pursuant to Section 108 of the New York State Open Meetings Law to seek  
24 privileged attorney-client legal advice from Corporation Counsel.  
25

26 Chairman Klemens called the regular meeting to order in the Council Hearing Room of the  
27 City Hall and a quorum was present to conduct official business. The Chairman noted that  
28 the Planning Commission made no decisions during the meeting with Corporation  
29 Counsel.  
30

31 **I. HEARINGS**

32  
33 Chairman Klemens called the regular meeting to order in the Council Hearing Room of the  
34 City Hall and a quorum was present to conduct official business.  
35

36 **1. Howard Residence**

37  
38 Beth Evans (applicant's environmental consultant) provided an overview of the application,  
39 noting that the site includes a small pocket of hydric soils in the rear yard that form a  
40 wetland. She noted that the application involves the removal of an existing residence and  
41 construction of a new residence within a 100-foot wetland buffer. The project would result  
42 in an approximately 239 square-foot increase in impervious area within the wetland buffer.  
43 Ms. Evans noted that the application had been revised to shift the location and

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1 configuration of the residence to further minimize wetland buffer disturbances. With the  
2 exception of installing new wetland plants, she indicated that no activities, including grading  
3 are proposed within the wetland. Ms. Evans noted that the application would also remove  
4 an existing septic system located near the wetland and that the application would not alter  
5 the hydrological conditions in the wetland. In order to prevent future encroachment, Ms.  
6 Evans indicated that a permanent demarcation would be provided around the perimeter of  
7 the expanded wetland.

8  
9 Mr. Chris Bain (abutting neighbor at 280 Grace Church Street) requested that the Planning  
10 Commission carefully review the application with respect creating off-site drainage  
11 impacts on his property, which is located behind the applicant's property. Mr. Bain  
12 indicated that he installed a system of catch basins and pumps on his property to address  
13 flooding conditions on his property and that he does not want the application to create  
14 flooding issues in the future. He also noted concern that the proposed wetland may attract  
15 mosquitoes.

16  
17 The Commission inquired as to where Mr. Bain pumps the collected stormwater. Mr. Bain  
18 indicated that stormwater is pumped from his property to the adjacent Nelson property  
19 where he has secured an easement for the purpose of receiving his stormwater.

20  
21 The City Engineer and Commission noted that all impervious areas, including roof drains  
22 would be directed to sub-surface drywells. In addition the removal of the septic system in  
23 the rear yard should improve on-site stormwater conditions.

24  
25 There were no additional public comments.

26  
27 On a motion made by Lawrence H. Lehman, seconded by Brian Spillane and carried by  
28 the following vote:

29  
30 AYES: Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan,  
31 Lawrence H. Lehman, Brian Spillane

32 NAYS: None

33 ABSTAIN: None

34 ABSENT: Peter Larr

35  
36 the Planning Commission took the following action:

37  
38 **ACTION:** The Planning Commission closed the public hearing on Wetland Permit  
39 Application Number 102.

## 40 41 2. Simmons Residence 42

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1 Kurt Dabson (applicant's landscape architect) provided an overview of the application  
2 noting that it involves the construction of a 1.5 story addition on the rear of an existing  
3 residence. Mr. Dabson noted that 50% of the existing residence is located in the wetland  
4 buffer. He indicated that the proposed addition would replace an existing bluestone patio.  
5 As recommended by the Planning Commission for mitigation, Mr. Dabson noted that the  
6 plan had been revised to reflect the removal of an existing concrete slab located in the rear  
7 yard. He indicated that the project would result in an approximately one percent increase in  
8 impervious area on the property.

9  
10 There were no public comments.

11  
12 On a motion made by Barbara Cummings, seconded by Brian Spillane and carried by the  
13 following vote:

14  
15 AYES: Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan,  
16 Lawrence H. Lehman, Brian Spillane

17 NAYS: None

18 ABSTAIN: None

19 ABSENT: Peter Larr

20  
21 the Planning Commission took the following action:

22  
23 **ACTION:** The Planning Commission closed the public hearing on Wetland Permit  
24 Application Number 104.

## 25 26 27 **II. ITEMS PENDING ACTION**

### 28 29 **1. Howard Residence**

30  
31 The Commission discussed the proposed "hardedge" that would be used as a  
32 demarcation of the wetland mitigation area. Ms. Evans provided a detail for the  
33 Commission's review. The Commission found the detail acceptable and requested that as  
34 a condition of approval that the plan be revised to show the hardedge detail.

35  
36 The Commission discussed the proposed drainage provisions, noting that the plan did  
37 provide sufficient detail to show the directing of stormwater from roof drains to the  
38 infiltration system located in the front yard. The Commission recommended that as a  
39 condition of approval that the plan be revised to include a note indicating that all roof  
40 drainage shall be directed to the sub-surface infiltration system.

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Nicholas Hodnett (Chairman of the Conservation Commission/Advisory Council (CC/AC)), presented comments regarding the application, noting that the wall located along the rear property line should be "dry-laid" to allow water to pass through. In response to Mr. Bain's remarks, Mr. Hodnett noted that the catch basins located on his property are more likely a mosquito habitat than the proposed wetland on the Howard property. Mr. Hodnett also recommended that the plant list be reviewed and possibly modified to include more deer-resistant plant material. The Commission noted that the proposed plant list provided by the applicant provides more desirable herbaceous wetland plantings that should withstand deer disturbances.

The Commission discussed the proposed condition of approval that would require the City Building Inspector to condition the certificate of occupancy with the continued compliance of the wetland mitigation plan approved by the Commission. The Commission agreed that while not full proof, such a condition would likely be reflected in any title search making future property owners aware of the wetland area on the property and Planning Commission's approval conditions.

On a motion made by Lawrence H. Lehman, seconded by Franklin Chu and carried by the following vote:

AYES:	Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan, Lawrence H. Lehman, Brian Spillane
NAYS:	None
ABSTAIN:	None
ABSENT:	Peter Larr

the Planning Commission took the following action:

**ACTION:** The Planning Commission adopted a resolution of conditional approval for Wetland Permit Application Number 102.

### 2. Simmons Residence

Kurt Dabson noted that the plan had been revised to include the sedimentation and erosion control measures recommended by the Commission. He clarified for the Commission that the driveway detail was a standard erosion control detail, but that such a driveway was not proposed on this application.

Mr. Hodnett noted that the CC/AC had no comments.

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On a motion made by Lawrence H. Lehman, seconded by Brian Spillane and carried by the following vote:

AYES: Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan, Lawrence H. Lehman, Brian Spillane

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr

the Planning Commission took the following action:

**ACTION:** The Planning Commission adopted a resolution of conditional approval for Wetland Permit Application Number 104.

### 3. Barber Residence

Pam Lester (applicant's landscape architect) noted that as requested, she meet with the Biancas regarding their concerns with the application. She noted that they were comfortable with the height of the proposed retaining wall and plants, but that they need more time to consider the impact of the proposed fence on their view of Long Island Sound. She noted that the Biancas did not get back to her and that Mr. Bianca was undergoing surgery.

The Commission discussed the proposed fence detail and material. Ms. Lester noted that a black wire mesh would be used between the split rails. The fence would be a modified split rail called a "Fairfield".

The Commission appreciated the efforts by Ms. Lester to address the concerns of the neighbors, but that further modifications solely to eliminate potential visual impacts of the application were likely beyond the legal jurisdiction of the Commission in reviewing a wetland permit application. The nexus for the Commission's review would be greater if more people were impacted.

On a motion made by Barbara Cummings, seconded by Hugh Greechan and carried by the following vote:

AYES: Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan, Lawrence H. Lehman, Brian Spillane

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr

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the Planning Commission took the following action:

**ACTION:** The Planning Commission adopted a resolution of conditional approval for Wetland Permit Application Number 101.

### 4. 262 Purchase Street

The Commission began the discussion by responding to a comment in Mr. Latwin's (applicant's attorney) January 24, 2002 letter in which he states that the application been pending before the Commission for almost a year. The Commission noted that during that review period there were times that Mr. Latwin did not pursue his application and did not make a submission to be on the Commission's agenda. The Commission also noted that there were some delays due to the change in Commission members and its attempts to review alternative plans to address the concerns of neighbors.

The Commission noted that it was going to release for the public record the comments of the City Planner regarding the application. The Commission noted that it included information that may be relevant to a decision by the Commission on the application.

On a motion made by Brian Spillane, seconded by Franklin Chu and carried by the following vote:

**AYES:** Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan, Lawrence H. Lehman, Brian Spillane

**NAYS:** None

**ABSTAIN:** None

**ABSENT:** Peter Larr

the Planning Commission took the following action:

**ACTION:** The Planning Commission requested that the City Planner comments be referred to the applicant for their use and consideration and that such comments be made part of the public record.

Mr. Latwin questioned why the comments had not been released at the Commission's last meeting and indicated that releasing the comments at this point was improper. He further requested that a new public hearing be scheduled so that the City Planner's comments could be more properly submitted for the record and afford him the opportunity to cross-examine the City Planner. The Commission noted that the comments were not submitted at the last meeting because the Commission required legal advice from Corporation

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1 Counsel. In addition, the Commission noted that there would be no decision on the  
2 application that night, which would permit Mr. Latwin to respond to the City Planner's  
3 comments at their next meeting.

4  
5 The City Planner, noted that if the Commission is considering a site plan that includes  
6 substantial modifications from the site plan that was the subject of the original public  
7 hearing that an additional hearing may be necessary.

8  
9 Mr. Latwin commented that he witnessed a quorum of the Planning Commission meeting  
10 with Corporation Counsel in the City Planner's office before the meeting. He suggested  
11 that such a meeting was a violation of the Open Meetings Law since the Commission did  
12 not publicly announce and vote on conducting an executive session. The Commission  
13 noted that it did not conduct an executive session, but rather a meeting pursuant to Section  
14 108 of the Open Meetings Law to seek attorney-client advice.

15  
16 Mr. Latwin noted that the only reason the City Planner comments were being released was  
17 because they included information critical of the application. He again noted that such  
18 comments should not be part of the record and requested that the Commission vote down  
19 his application that night so that he could challenge the Commission's decision in court.

20  
21 The Commission noted that such a vote could not occur that night since it would be  
22 premature. The City Planner noted that typically the Commission does not act on an  
23 application until after it reviews a draft resolution. The Commission also noted that it  
24 typically directs the City Planner to prepare a resolution, which could include a decision of  
25 approval, denial or approval with conditions.

26  
27 Dr. Maro (property owner) noted concern with the planning process. He indicated that he  
28 has spent considerable time and money on the planning process and has attempted to  
29 address the Commission's concerns by preparing revised plans. He noted that each time  
30 a new plan is prepared more issues are raised and suggested that such a process was  
31 time-consuming and unfair. Dr. Maro noted that his application involves two doctors in a  
32 building with 8 parking spaces consistent with the parking requirements of the Zoning  
33 Code. He noted that the adjacent property (which he currently has tenant space) has 7  
34 doctors and only 15 parking spaces. Mr. Latwin added that the proposed use is consistent  
35 with other medical offices in the area approved by the Commission.

36  
37 The Commission noted that it was undertaking a deliberative process to address the  
38 concern of neighbors and the criteria of the Zoning Code. The City Planner noted that the  
39 subject site is different from others in the area. First, many of the properties referenced in  
40 Mr. Latwin's January 24 analysis were located in different zoning districts, including the B-1  
41 District, which permits medical office uses as-of-right. Medical offices on these properties  
42 do not require the Commission to make findings of consistency with the specific standards

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1 and criteria in the Zoning Code. The City Planner also noted that the only one other  
2 property in the RA-2 District (which is the same zoning district as the applicant's) that has a  
3 medical use is located next door. That unique property met the zoning criteria because it  
4 was the largest and widest property in the district. He noted that the applicant's property  
5 was only 50-feet wide and that nearly 25 percent of the site was constrained with steep  
6 slopes. Other medical offices in a similar RA-3 District also included unique conditions of  
7 their approval, had different property characteristics or included medical offices with fewer  
8 doctors.

9  
10 The Commission recited, reviewed and discussed the application's compliance with each  
11 of the permit decision criteria of Section 197-10 of the City Zoning Code, noting the  
12 following (permit criteria indicated in *italic*):

- 13  
14 (1) *In a residence district the proposed use will serve a community need or*  
15 *convenience.*

16  
17 The Commission noted that the use appeared to meet a community need.

- 18  
19  
20 (2) *The proposed use will be appropriate in the proposed location and will have no*  
21 *material adverse effect on existing or prospective conforming development, and the*  
22 *proposed site is adequate in size for the use.*

23  
24 The Commission noted that the zoning district is an apartment zone and that the  
25 proposed medical use was inconsistent with the district and existing uses. The  
26 Commission concurred with the comments of the City Planner included in his report.

- 27  
28 (3) *In cases where conversion is proposed of a structure designed and built originally*  
29 *for other uses, the structure will be adaptable.*

30  
31 The Commission noted that this condition was not applicable.

- 32  
33 (4) *The proposed use will be provided with adequate off-street parking to meet its*  
34 *needs, properly screened from adjoining residential uses, and entrance and exit*  
35 *drives are to be laid out to minimize traffic hazards and nuisance.*

36  
37 The Commission noted that the proposed use may be too intense for the site,  
38 impacting adjacent residential properties. The Commission noted that a less intense  
39 use might provide more opportunities to include screening and address land use  
40 compatibility concerns on adjacent properties. The Commission also noted concern  
41 with the increase in the number of curb-cuts on Purchase Street and the impact that



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1 could have on the loss of on-street parking. Parking would also need to be eliminated  
2 in front of the site to avoid vehicle sight-distance obstructions.

3  
4 (5) *The potential generation of traffic will be within the reasonable capacity of the*  
5 *existing or planned streets and highways providing access to the site.*

6  
7 The Commission noted that adjacent roadways have adequate capacity to  
8 accommodate the additional traffic from the proposed medical uses.

9  
10 (6) *There are available adequate and proper public or private facilities for the*  
11 *treatment, removal or discharge of sewage, refuse or other effluent that may be*  
12 *caused or created by or as a result of the use.*

13  
14 The Commission indicated that the application met this standard. Medical waste,  
15 however is a concern, but would be disposed of in accordance with all applicable laws.

16  
17 The Commission discussed pursuant to the Zoning Code criteria of Section 197-10  
18 possible conditions of an approval that could address impact concerns. The Commission  
19 noted that a smaller building or alternative site configuration may address concerns, but  
20 that the current configuration suffers from short-comings.

21  
22 Franklin Chu noted that he was going to abstain from voting on the application since he  
23 was new to the Commission, but questioned whether an alternative design was possible.  
24 The Commission responded by noting that suggesting specific designs was not the  
25 practice of the Commission and that that is the responsibility of the applicant. They noted  
26 that throughout the process the Commission has considered a number of alternatives but  
27 that suggesting a specific design might result in a perceived acceptance of a plan  
28 prematurely. The City Planner also provided an historical overview of the changes in the  
29 site plan and issues raised by the Commission.

30  
31 The Commission discussed the proposed parking layout noting that the configuration  
32 would result in parking spaces difficult for vehicles to access. The Commission noted  
33 again that the building and use may be too much for the property and that it has yet to be  
34 presented with an alternative it finds acceptable.

35  
36 Mr. Mara noted that the project is not economically viable with one doctor's office. He also  
37 noted that his office requires the retention of medical files for up to seven years, requiring  
38 considerable storage area. He inquired for more specific direction from the Commission  
39 as to what it would require to approve his project.

40  
41 The Commission responded that a plan that reduces the size of the building and eliminates  
42 the need for variances would be desirable. The City Planner suggested that a single

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1 medical office would not only reduce the size of the building, but also reduce the amount of  
2 required parking. This would provide more space for landscape screening from  
3 neighboring properties. In addition, since the intensity of the use would be reduced, the  
4 driveway width could also be reduced allowing for a greater building setback and maybe  
5 fewer variances.

6  
7 Mr. Latwin indicated that the applicant would consider an alternative design to submit for  
8 the Commission's next meeting. The Commission and City Planner agreed to provide Mr.  
9 Latwin some relief from the site plan submission deadline to accommodate his schedule.

### 10 11 **5. Santangelo Residence**

12  
13 The Commission discussed with the George Mottarella City Engineer the proposed sewer  
14 design for the Santangelo Residence and North Manursing Island. Mr. Mottarella noted  
15 that additional technical information was necessary to demonstrate that the proposed  
16 system would function properly with the pump selected by the applicant for the Santangelo  
17 residence. Mr. Mottarella also noted that additional agreements will be necessary in the  
18 future after more than five residences on the Island are connected to the system to limit the  
19 City's responsibility to maintain sewer connections on private property. In addition, the  
20 applicant will be required to provide appropriate documentation demonstrating it has the  
21 right to install the sewer line within the Island Drive road right-of-way. Mr. Rob Marx  
22 (applicant's architect) indicated that the proposed pump would meet the City Engineer's  
23 specifications and the appropriate documentation would be provided.

24  
25 The Commission discussed deferring a decision on the application until the applicant  
26 received approval from Westchester County Department of Health. The City Planner  
27 suggested that typically the County likes to see an approval from the local jurisdiction  
28 before it approves a plan. The City Planner also noted that if the County requires  
29 substantial changes in the plan that such changes would require the applicant to return to  
30 the Planning Commission for final approval.

31  
32 The Commission discussed the changes in the proposed landscape/wetland mitigation  
33 plan and found them acceptable.

34  
35 On a motion made by Brian Spillane, seconded by Barbara Cummings and carried by the  
36 following vote:

37  
38 AYES: Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan,  
39 Lawrence H. Lehman, Brian Spillane  
40 NAYS: None  
41 ABSTAIN: None  
42 ABSENT: Peter Larr

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the Planning Commission took the following action:

**ACTION:** The Planning Commission adopted a resolution of conditional approval for Wetland Permit Application Number 98.

### 6. Purchase Street Associates, LLC

Mr. Paul Benowitz (applicant's architect) provided an overview of the application noting that it involved the reconfiguration of the bagel shop at 27-29 Purchase Street to relocate the bagel making operation to the basement and the creation of a new retail tenant space. He noted that the configuration would be the same as that which existed many years ago and that his client had no tenant at this time.

Mr. Benowitz noted that the ceiling height in the basement would comply with the requirements of the New York State Building Code. He also provided background and an historical overview of the origins and intent the New York State Rehabilitation Code adopted in the early 1990s.

He noted that the proposed change in tenant space required site plan approval under the Zoning Code. Mr. Benowitz provided an overview of the parking calculation, noting that the application exceeds the Zoning Code requirements.

The Commission discussed the dilapidated condition of the existing garage on the rear of the property and suggested that it could be removed to provide more parking or refuse disposal areas. Mr. Benowitz noted that his client did not want to remove the structure. He noted that it was possible to make modest aesthetic improvements to the structure and that it could be used for parking if the applicant desired.

On a motion made by Brian Spillane, seconded by Barbara Cummings and carried by the following vote:

AYES: Michael W. Klemens, Franklin Chu, Barbara Cummings, Hugh Greechan,  
Lawrence H. Lehman, Brian Spillane

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr

the Planning Commission took the following action:

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Christian K. Miller, AICP  
City Planner